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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/001,451	10/23/2001	Lisa A.G. Tweardy	1213-01	2404

22469 7590 11/05/2003

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EXAMINER

MATHEW, FENN C

ART UNIT PAPER NUMBER

3764

DATE MAILED: 11/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/001,451

Applicant(s)

TWEARDY ET AL.

Examiner

Fenn C Mathew

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 13 August 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-10, 14, 16-20 and 24-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 14, 17, 18 and 32 is/are allowed.
- 6) ☒ Claim(s) 1-9, 19, 20, 24-31, 33 and 34 is/are rejected.
- 7) ☒ Claim(s) 10 and 16 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 13, 2003 has been entered.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 34 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant has failed to describe in the specification, a chin strut that extends non-vertically from the chin of a wearer to the plate.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-5, 7-9, 19-20, 24, 28-29, and 33 are rejected under 35 U.S.C. 102(e) as being anticipated by Garth et al. (U.S. 6,315,746). Referring to claim 1, Garth discloses a cervical brace for attachment to a cervical collar comprising a chest plate (151) and a chin strut (121) including means (157) for attachment to the chest plate and means (113) for attachment to a chin support (102) of the cervical collar.

6. Referring to claim 2, Garth discloses the cervical brace further comprising a vest wherein the chest plate is a portion of the vest.

7. Referring to claim 3, Garth discloses the vest further comprising a back plate (251).

8. Referring to claim 4, Garth discloses the chin strut extends in a substantially straight line from the chest plate to the support.

9. Referring to claim 5, Garth discloses the chin support is adjustable relative to the chest plate. (See abstract).

10. Referring to claim 7, Garth discloses a back plate (251), and occipital support (202), and a rear strut (220).

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11. Referring to claim 8, Garth discloses straps (253) for securing the back plate to the chest plate.
12. Referring to claim 9, Garth discloses the rear strut is adjustable and a strut lock (157).
13. Referring to claim 28, Garth discloses the chin strut is detachably connected to the chin support of the cervical collar.
14. Referring to claim 19, Garth discloses a method including attaching a cervical collar to a patient, attaching a chin strut from an edge of the cervical collar adjacent the chin of the patient to a chest plate and adjusting the relative position of the head by selecting a relative position between the chin strut and the chest plate and attaching the chest plate to the patient's thorax.
15. Referring to claim 20, Garth discloses attaching an occipital support, attaching a rear strut to the occipital support, attaching a back plate to the patient and adjusting the rear strut and locking the rear strut to the back plate.
16. Referring to claim 24, Garth discloses a cervical brace including a cervical collar having front and rear portions, wherein the rear portion comprises an occipital support, a vest comprising a front plate and a back plate, and means for attachment of the front plate to the cervical collar front portion, wherein the back plate is capable of being free from attachment to the cervical collar portion. (Back plate maintains position via connection to the front plate by straps).

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17. Referring to claim 29, Garth discloses a cervical brace comprising a chest plate, a chin strut attached to the chest plate, the chin strut including means for detachably connecting to a chin support of the cervical collar. (Inherently rivets can be removed).

18. Referring to claim 33, Garth discloses a cervical brace comprising a cervical collar having front and rear portions, wherein the rear portion comprises an occipital support, a vest comprising a front plate, and a back plate, and means for attaching the front plate to the back plate, and a rear strut extending from the back plate to the rear portion wherein the rear strut includes means for independently adjusting the height and angle of attachment of the rear strut to the back plate.

***Claim Rejections - 35 USC § 103***

19. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

20. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Garth. Referring to claim 6, Garth discloses the claimed structural limitations except for the user of hook and loop fasteners to allow adjustability between the chin support and chest plate. Under applicant's own admission, (page 3, paragraph [0024]), it would have been obvious to one having ordinary skill in the art at the time of invention to substitute the integrally molded chin strut and receptacle in order as an alternative means of adjusting the chin support relative to the chest plate.

21. Claims 25-27, 30, and 31, are rejected under 35 U.S.C. 103(a) as being unpatentable over Garth in view of Mattingly (U.S. 4,913,135). Referring to the

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aforementioned claims, Garth discloses the claimed limitations (see discussion above), but fails to teach the chest plate comprising a lower plate slidably and lockably engaged to an upper plate. Mattingly discloses an analogous device comprising a lower plate (16) slidably and lockably engaged to an upper plate (25). It would have been obvious to one having ordinary skill in the art at the time of invention to substitute the two-piece chest plate taught by Mattingly for the front plate disclosed by Garth in order to provide a plate that allowed for height adjustment depending on the preferences of the user.

### ***Allowable Subject Matter***

22. Claims 10 and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

23. Claims 14, 17-18, and 32 are allowed. The following is a statement of reasons for the indication of allowable subject matter: The prior art of record fails to teach a cervical collar, connected to a vest by a strut, wherein the strut is engaged by a latch and latch housing, and further does not teach or fairly suggest a strut lock including an eccentric lever for locking one end of the strut to the to a bracket affixed to a back plate.

### ***Conclusion***

24. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Greene

U.S. 4,582,051

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Hale U.S. 2,904,040

Hall U.S. 2,820,455

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fenn C Mathew whose telephone number is (703) 305-2846. The examiner can normally be reached on Monday - Friday 9:00am - 5:30pm.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.



NICHOLAS D. LUCCHESI  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3764

  
fcm

October 31, 2003